

TCEQ Air Quality Permit Number 92504L001  
TCEQ Docket No. 2011-1524-AIR

Application by J.R. Thompson, Inc., to	§	
Authorize a Portable Rock Crusher in	§	Before the Texas Commission on
Cooke County, Texas	§	Environmental Quality
	§	

**Reply of Michelle Sandmann, Kenneth Bierschenk, and Concerned Neighbors of  
Proposed Rock Crusher**

TO THE HONORABLE COMMISSIONERS:

Come now Michelle Sandmann, Kenneth Bierschenk and Concerned Neighbors of Proposed Rock Crusher and offers this brief reply to the hearing request responses of the Applicant and Executive Director.

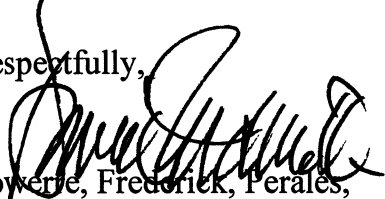
Neither the ED nor the Applicant believe that the impact of air contaminants from the proposed facility on nearby surface waters should be within the scope of the referral to SOAH. As the ED notes, this is an issue within the TCEQ's jurisdiction, generally. In Texas law, air pollution is defined to be: "the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that: (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation or property." § 382.003(3), Tex. Health & Safety Code. BACT, which all parties agree is a pollution control standard applicable to the proposed facility, is defined in state law to be, in relevant part: "an air pollution control method for a new or modified facility ..." 30 TAC § 116.10. So, if the Applicant is to demonstrate that its operation will use BACT to prevent the release of air contaminants

that would adversely affect human health or welfare, animal life, vegetation or property or interfere with the normal use or enjoyment of animal life, vegetation or property, the impact of those contaminants on surface water – itself “property” and a direct influence on human health and welfare and animal life and vegetation and the enjoyment of the latter and of property – must be considered.

The Applicant would not have SOAH consider the adequacy of the public notice, but this is customarily a jurisdictional pre-requisite, so it must be considered. The Applicant would not have SOAH consider the impact of the proposed facility on the quality of life of the area, but the BACT standard plainly looks to control air pollution, which is broadly defined to include such quality of life components as human health and welfare and enjoyment of property. The Applicant would not have SOAH consider the enforceability of the permit that is issued, but, of course, an unenforceable permit is no permit at all. Finally, the Applicant would not have SOAH consider the health impacts of chemicals added by the Applicant to the atmosphere as part of its dust-suppression efforts; those chemicals, however, are clearly “air contaminants” that, once airborne, will be “air pollution” the Applicant has to justify. See, § 382.003(2 and 3), Tex. Health & Safety Code.

TCEQ generally provides, for these rock crusher dockets, for a year’s time from the preliminary SOAH hearing to a recommended SOAH action. See, Interim Order in TCEQ Docket No. 2010-0660-AIR re: Permit No. 82199L002 (July 14, 2010). There is no reason to expect this rock crusher docket, which is hotly contested, will or should be concluded on any more abbreviated schedule.

Respectfully,

  
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Proposed Rock Crusher

## CERTIFICATE OF SERVICE

By my signature, below, I certify that on the 26<sup>th</sup> day of September, 2011 a true and correct copy of the foregoing document was served upon the following via hand-delivery, deposit in the U.S. mail, and/or facsimile/electronic transmission.

  
David Frederick

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